

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM L. GALE,

Defendant.

NO. CR20-04 RAJ

ORDER

THIS MATTER comes before the Court on defendant William Gale's motion, Dkt. No. 27, for *de novo* review of Magistrate Judge Brian A. Tsuchida's order denying his motion to reopen the detention order entered on April 2, 2020. Dkt. No. 26. The parties have adequately described the procedural history of this case so this Court will not restate the same again in this order.

In Mr. Gale's motion for *de novo* review, he asserts (1) since the time of his initial detention order, the Coronavirus Disease 2019 ("COVID-19") global pandemic threatens the health and safety of those confined in crowded environments such as the Federal Detention Center (FDC); (2) the current pandemic constitutes a compelling reason warranting his temporary release until the pandemic has ended; and (3) the restrictions on attorney communications with detainees calls for his temporary release under 18 U.S.C. § 3142(1)(4) because such release is necessary for preparation of his defense.

The Court has reviewed the materials filed in favor of the motion and in opposition to the motion. Based on this review, and the reasons stated below, the motion is DENIED, as is the alternative request for temporary release.

1 The Bail Reform Act permits the re-opening and review of an existing detention
2 order based on new information, as permitted by 18 U.S.C. § 3142(f).

3 When considering a motion challenging a magistrate judge's detention order, the
4 Court "should review the evidence before the magistrate and make its own independent
5 determination whether the magistrate's findings are correct, with no deference." *United*
6 *States v. Koenig*, 912 F.2d 1190, 1193 (9th Cir. 1990). The Court must enter its own
7 findings of fact, "whether different from or an adoption of the findings of the magistrate,"
8 and render a decision "without deference to the magistrate's ultimate conclusion." *Id.*

9 The Court may reopen a detention hearing "if the judicial officer finds that
10 information exists that was not known to the movant at the time of the hearing and that
11 has a material bearing on the issue whether there are conditions of release that will
12 reasonably assure the appearance of such person as required and the safety of any other
13 person and the community." 18 U.S.C. § 3142(f)(2). New and material information
14 consists of something other than a defendant's own evaluation of his character or the
15 strength of the case against him: truly changed circumstances, something unexpected, or
16 a significant event. *See United States v. Rodriguez-Adorno*, 606 F.Supp.2d 232, 239
17 (D.P.R. 2009).

18 In this case, as the government notably asserts, Gale does not challenge the
19 magistrate's factual findings underlying his original detention order, nor does he point to
20 any change in his individual circumstances that would warrant reconsideration of that
21 order or the denial of his motion to revisit it. (Dkt. No. 29, p. 2).

22 Having made an independent review of the record surrounding the defendant's
23 detention, the Court reaches the same precise conclusion of Judge Tsuchida (Dkt.
24 No. 26), that the defendant's serious criminal history (convictions for unlawful
25 possession of a firearm, felony domestic violence assault, and felony domestic
26 harassment), the nature and circumstances of the case (allegedly having a firearm on his
27 hip with an extended magazine loaded with 26 bullets, including one in the chamber and
28 a second handgun in his car, along with another magazine), his gang connections, and the

1 fact that he was on probation when he committed the instant offense all militate against
2 granting the defendant's motion for reasons independent of those raised in this motion.
3 In addition, the government has provided to this Court an audio tape represented to be the
4 defendant while booked in the King County Jail where he is allegedly making threats of
5 violence against an unknown individual.

6 Consequently, this Court concludes that there are no conditions or combination of
7 conditions that would reasonably assure the defendant's appearance as required or the
8 safety of any other person and the community. The Court thus turns to the specific
9 justifications raised by the defendant in his *de novo* review motion.

10 The Court does not dispute or challenge the assertions by the defendant of the
11 dangerous risks of COVID-19. It is undisputed that this contagious disease may spread
12 and affect countless individuals whether incarcerated or not. The defendant cites to
13 generalized risks and nationwide prison population statistics about the growth in positive
14 cases reported by the Bureau of Prisons (BOP). He further references the tragic impact
15 data of COVID-19 in other jurisdictions, specifically Oakdale FCI, Elkton, and Danbury
16 FCI. His analysis includes the Department of Justice's recognition of the dangers of the
17 disease and potential outbreak in prison populations, *i.e.*, the Attorney General's order to
18 BOP to expand the group of federal inmates eligible for early release and to prioritize
19 release for specific facilities and those similarly situated where the virus is materially
20 affecting BOP operations. (Dkt. No. 27, p. 9).

21 Fear of being affected by COVID-19 probably rests upon the mind of every person
22 on the planet and is more likely than not at a heightened level by those locked in
23 detention facilities. What is glaringly missing from the defendant's analysis are the
24 specifics of how he is uniquely affected or potentially affected by the virus beyond fear
25 and speculation. The defendant provides no specific factual or medical data about how
26 his continued incarceration will be affected by the virus other than the general danger to
27 incarcerated persons and his fear of the possibility that he will become infected.
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1 Defendant's generalized fear of the virus is tempered by the fact that as of the date
2 of this order, his risk factor is speculative since the BOP is reporting no known cases at
3 FDC-SeaTac.

4 Based upon the record, defendant's request for release from custody is primarily
5 based purely on the speculative prospect of a COVID-19 outbreak at the FDC-SeaTac.
6 This speculation without individualized justification for release is unsubstantiated and
7 unwarranted. There is no indication or evidence that FDC staff is unprepared to address a
8 COVID-19 outbreak if one should arise.

9 District courts across the country have been inundated with motions similar
10 to the one now before the Court. Indeed, on April 17, 2020, the day that
11 defendant's motion was noted for consideration, at least five orders denying motions
12 brought under 18 U.S.C. § 3142(f) were issued in various districts, and since then, no less
13 than nine more have been entered. *See United States v. Flores-Lopez*, 2020 WL 1862599
14 (W.D. Wash. Apr. 14, 2020) (reversing a magistrate judge's decision to reopen detention
15 hearing); *see also United States v. Boone*, 2020 WL 1865202 (E.D. Cal. Apr. 14, 2020);
16 *United States v. Miller*, 2020 WL 1864633 (D. Mont. Apr. 14, 2020); *United States v.*
17 *Smith*, 2020 WL 1864587 (D. Md. Apr. 14, 2020); *United States v. Urban*, 2020 WL
18 1862678 (N.D. Ohio Apr. 14, 2020); *United States v. Hussein*, 2020 WL 1853656 (D.
19 Minn. Apr. 13, 2020); *United States v. Lake*, 2020 WL 1852435 (D. Colo. Apr. 13,
20 2020); *United States v. Calvert*, 2020 WL 1847754 (D. Kan. Apr. 13, 2020); *United*
21 *States v. Robinson*, 2020 WL 1820089 (D. Md. Apr. 11, 2020); *United States v. Terrone*,
22 2020 WL 1844793 (D. Nev. Apr. 10, 2020); *United States v. Crumpler*, 2020 WL
23 1820580 (N.D. Ohio Apr. 10, 2020); *United States v. Zamorano*, 2020 WL 1820498 (D.
24 Colo. Apr. 10, 2020); *United States v. Champion*, 2020 WL 1820488 (D. Mont. Apr. 10,
25 2020); *United States v. Cannon*, 2020 WL 1820087 (D. Md. Apr. 10, 2020).

26 In each of these cases, the pretrial detainee unsuccessfully relied on the current
27 global crisis involving COVID-19 in seeking to reopen the detention hearing. What these
28 decisions make clear is that COVID-19 does not support the reopening of a detention

1 hearing because “the governing legal standard ‘is not . . . the harms that [a defendant’s]
2 incarceration [might] cause (however substantial),’” but rather “‘the danger’ that ‘would
3 be posed by the person’s release.’” *Calvert*, 2020 WL 1847754 at *2 (quoting *United*
4 *States v. Lee*, 2020 WL 1541019 at *5 (D.D.C. Mar. 30, 2020) (emphasis in original, 2
5 quoting 18 U.S.C. § 3142(g)(4))).

6 In contrast to the cases that defendant has cited, he offers nothing more than
7 generalized fear and speculation, which do not constitute a compelling reason for release.
8 *See Lake*, 2020 WL 1852435 at *3; *See also Hussein*, 2020 WL 1853656 at *4; *Graham*,
9 2020 WL 1685912 at *5-6.

10 At best, defendant has raised concern about the extent to which COVID-19 cases
11 might arise at the FDC and the possibility that he might contract the virus. He fails,
12 however, to articulate how his own personal health has been impacted or articulated any
13 heightened health hazards he suffers that place him at a higher risk of catching the virus
14 should an outbreak occur at the FDC. At best, and without any medical records or
15 verification, he contends he suffers from asthma that could make him particularly
16 vulnerable to complications arising from the virus should he become infected. (Dkt.
17 No. 27, p. 16.) He makes no mention if the asthma is moderate or severe or any
18 circumstances to suggest that extra precautions are warranted or that his health would be
19 in jeopardy with continued detention.

20 Last, the defendant generally reports that the FDC’s restrictions on attorney
21 communications with detainees calls for his temporary release under 18 U.S.C.
22 § 3142(1)(4) because such release is “necessary for preparation of his defense[.]” In
23 support of his request he asserts counsel cannot visit him at the FDC, and the only means
24 of communication is by email, U.S. mail, or by telephone (Dkt. No. 27 p. 23) and that
25 because of these restrictions counsel is prevented from having meaningful in-person
26 meetings with his client regarding his case or to prepare for trial.

27 Again, the government does not dispute that such restrictions are in place. But the
28 reality is that defendant’s ability to communicate with counsel is the same for all

1 defendants currently housed at the FDC. The defendant does not challenge the
2 government's assertion that the FDC is working closely with counsel to ensure proper
3 access.

4 Moreover, General Order No. 01-20 was issued on March 6, 2020 in response to
5 the outbreak of COVID-19 in Washington. Among other things, General Order 01-20
6 continued all criminal matters scheduled for in-court appearance, including the trial in
7 this case. The continuance was extended through June 1, 2020, by General Order No.
8 02-20 which was issued on March 17, 2020. The continuance was further extended
9 through July 1, 2020. See General Order No. 07-20 (Apr. 13, 2020). As indicated in
10 each of the General Orders, the COVID-19 virus has delayed virtually all proceedings
11 which will result in additional time to prepare for trial and consult with counsel. This
12 Court will certainly be amenable to a motion for additional time to consult with counsel
13 and prepare for trial in a meaningful way should the defendant make such a request.

14 As previously noted, the defendant's motion is premised almost in its entirety on
15 his fear that he will become infected with COVID-19 at the FDC. The risks the
16 defendant poses to the safety of the community if he were released is extraordinarily high
17 and far outweigh his desire to be released because of his generalized fear of contracting
18 the virus.

19 After conducting a *de novo* review of the basis for the defendant's motion this
20 Court reaches the same independent conclusion as the underlying magistrate judge. The
21 defendant's serious criminal history, the nature and circumstances of the case and arrest,
22 his gang connections, and the fact he was on probation when he allegedly committed the
23 instant offense all militate against his release.

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1 For the foregoing reasons the defendant's motion for release on an appearance
2 bond or in the alternative for temporary release are DENIED.

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4 DATED this 1st day of May, 2020.

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7 The Honorable Richard A. Jones
8 United States District Judge
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